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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT VAN TUINEN, Plaintiff, v. **YOSEMITE COMMUNITY COLLEGE DISTRICT, DR. JOAN SMITH, JILL STEARNS, MICHAEL GUERRA, BRENDA THAMES, BECKY CROW, CHRISTINE SERRANO, DOE DEFENDANT 1,** Defendants.	Case No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES** **JURY TRIAL DEMANDED**

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Plaintiff Robert Van Tuinen complains of Defendants and alleges:

I. INTRODUCTION

1. Each year on September 17 the United States celebrates the freedoms guaranteed by the Constitution and Bill of Rights. Congress officially designated September 17 as "Constitution Day" to commemorate the anniversary of the date that the Constitution was signed in 1787. Pursuant to that legislation, the Department of Education requires educational institutions that receive federal funding to hold educational programs pertaining to the United States Constitution on that date. *Notice of Implementation of Constitution Day and Citizenship Day*, 70 Fed. Reg. 29727 (May 24, 2005).

2. On September 17, 2013, the students of Modesto Junior College (the "College") received a very different lesson on Constitution Day, as the school's officials barred Plaintiff Robert Van Tuinen from distributing copies of the U.S. Constitution to fellow students in a public area of the campus. Both a College security officer and a College administrator instructed Mr. Van Tuinen that he would be allowed to distribute his message and any written materials only in the College's "free speech zone" that occupies a miniscule proportion of its East Campus, and only after scheduling his planned activity several days or weeks ahead of time. These actions were taken under College policies that not only require prior permission – with at least *five days*' notice – to engage in even such non-obtrusive speech as handing out literature, but also limit all individuals and student groups to using the free speech zone no more than eight hours each semester. Given the size of the student body, the free speech "allowance" amounts to scarcely more than *two-and-half minutes* per student, per semester. The policies contain no criteria for control of the free speech zone, which is thus left to the sole discretion of College security and administrators.

3. The College's reflexive bureaucratic restriction of free expression is sadly ironic, as "[t]he essentiality of freedom in the community of American

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universities is almost self-evident." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). In a long line of cases, the United States Supreme Court has made clear that "[t]eachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." *Id*. The Court has stressed that "state colleges and universities are not enclaves immune from the sweep of the First Amendment." *Healy v. James*, 408 U.S. 169, 180 (1972). Quite to the contrary, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Id*. (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). Accordingly, courts have zealously guarded the freedoms of speech, assembly, and petition in recognition that "[t]he college classroom with its surrounding environs is peculiarly the 'marketplace of ideas," *id*, and that "[t]he first danger to liberty lies in granting the State the power" to limit these freedoms "against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995).

4. This is a civil rights action to protect and vindicate the First and Fourteenth Amendment rights of Mr. Van Tuinen and his fellow students in the Yosemite Community College District (the "District"), as well as their rights under Article 1 of the California Constitution. By policy and practice, the District unlawfully restricts the College's students' constitutional rights to free expression. The policies enforced against Plaintiff are facially overbroad and prohibit the exercise of rights to free expression on the District's college campuses.

5. This action seeks declaratory and injunctive relief, damages, and attorneys' fees, to vindicate and safeguard the fundamental constitutional rights of Mr. Van Tuinen and his fellow students to freedom of speech and due process of law as secured by the First and Fourteenth Amendments of the United States Constitution, and by the Liberty of Speech Clause in the California Constitution.

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The College's and District's policies and enforcement practices are challenged on their face and as applied to Mr. Van Tuinen.

II. JURISDICTION AND VENUE

6. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act, 42 U.S.C. §§ 1983 and 1988.

7. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

8. This Court has authority to grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

9. This Court has authority to issue the requested injunctive relief pursuant to 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 65.

10. This Court has authority to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

11. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a), and it is authorized to award attorneys' fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

12. Venue is proper in the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391(b) because the events giving rise to the instant claim occurred within this District and because at least one Defendant resides in this District.

III. PLAINTIFF

13. Plaintiff Robert Van Tuinen is, and was at all times relevant to this Complaint, a United States Army Veteran and resident of Modesto, California, who is presently a student at the College pursuing an associate degree.

IV. DEFENDANTS

14. Defendant Yosemite Community College District, a public community college district organized and existing under the laws of the State of California, is

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one of 72 community college districts in the State, with oversight responsibility for Modesto Junior College and Columbia College. It also operates a Central Services unit for them.

15. Defendant Dr. Joan E. Smith serves as Chancellor and Chief Executive Officer of the Yosemite Community College District. She is responsible for the District's administration and policy-making, including the policies and procedures challenged herein that were applied to deprive Mr. Van Tuinen of his constitutional rights. Defendant Smith acquiesced in, sanctioned, and supported the actions of Defendants Stearns, Guerra, Thames, Crow, Serrano, and Doe Defendant 1 in enforcing these policies against Mr. Van Tuinen. Defendant Smith acted under color of state law when she violated Mr. Van Tuinen's constitutional rights to free expression. Defendant Smith is sued in her official capacity.

16. Defendant Jill Stearns is, and was at all times relevant to this Complaint, the President of Modesto Junior College, a public community college organized and existing under the laws of the State of California. She is responsible for enactment and enforcement of College polices, including the policies and procedures challenged herein that were applied to deprive Mr. Van Tuinen of his constitutional rights. Defendant acted under color of state law when she violated Mr. Van Tuinen's constitutional rights to free expression. Defendant Stearns is sued in her official capacity.

17. Defendant Michael Guerra is, and was at all times relevant to this Complaint, Vice President of College Administrative Services at Modesto Junior College. He is responsible for overseeing and enforcing the policies and procedures challenged herein that were applied to deprive Mr. Van Tuinen of his constitutional rights. Defendant Guerra acted under color of state law when he violated Mr. Van Tuinen's constitutional rights to free expression. Defendant Guerra is sued in his official capacity.

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18. Defendant Brenda Thames is, and was at all times relevant to this Complaint, Vice President of Student Services at Modesto Junior College. She is responsible for overseeing and enforcing the policies and procedures challenged herein that were applied to deprive Mr. Van Tuinen of his constitutional rights. Defendant Thames acted under color of state law when she violated Mr. Van Tuinen's constitutional rights to free expression. Defendant Thames is sued in her official capacity.

19. Defendant Becky Crow is, and was at all times relevant to this Complaint, Director of Campus Safety at Modesto Junior College. She is responsible for overseeing and enforcing the policies and procedures challenged herein that were applied to deprive Mr. Van Tuinen of his constitutional rights. Defendant Crow acted under color of state law when she violated Mr. Van Tuinen's constitutional rights to free expression. Defendant Crow is sued in her official capacity.

20. Defendant Christine Serrano is, and was at all times relevant to this Complaint, an Administrative Specialist at Modesto Junior College. Ms. Serrano was the College administrator who told Mr. Van Tuinen that because of "a time, place, and manner" restriction he could pass out literature only inside the College's "free speech area," after Constitution Day. Defendant Serrano acted under color of state law when she violated Mr. Van Tuinen's constitutional rights to free expression. Defendant Serrano is sued both in her individual and official capacities.

21. Doe Defendant 1 is, and was at all times relevant to this Complaint, a campus security officer at Modesto Junior College. Doe Defendant 1 was the College security officer who prevented Mr. Van Tuinen from distributing copies of the U.S. Constitution to fellow students outside the College student center. Doe Defendant 1 acted under color of state law when he violated Mr. Van Tuinen's constitutional rights to free expression. Doe Defendant 1 is sued both in his individual and official capacities.

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V. STATEMENT OF FACTS

A. Violation of Plaintiff's Constitutional Rights

22. On September 17, 2013, Mr. Van Tuinen endeavored to distribute copies of the U.S. Constitution to fellow students outside the campus student center at Modesto Junior College.

23. Approximately ten minutes after he began handing out copies of the Constitution, a College campus security officer, Doe Defendant 1, arrived and told Mr. Van Tuinen that any individual who wants to distribute pamphlets or literature on campus must first register with the College Student Development office.

24. Mr. Van Tuinen responded that requiring him to pre-register with College officials in order to distribute copies of the Constitution would impair his freedom of speech. After Doe Defendant 1 insisted that Mr. Van Tuinen would not be permitted to continue speaking to students or distributing literature without official approval, Mr. Van Tuinen followed the officer into the student center.

25. Once inside, Mr. Van Tuinen explained to Doe Defendant 1 that he intended to start a chapter of Young Americans for Liberty at the College and wanted to distribute copies of the Constitution to spark student interest. Doe Defendant 1 told Mr. Van Tuinen that "as a student on campus passing out anything whatsoever, you have to have permission through the Student Development office." Doe Defendant 1 then directed Mr. Van Tuinen to the Student Development office.

26. In the Student Development office, Mr. Van Tuinen spoke with Administrative Specialist Christine Serrano. Defendant Serrano told Mr. Van Tuinen that because of "a time, place, and manner" restriction, he could distribute literature only inside the "free speech area," which was located "in front of the student center, in that little cement area." The "free speech area" is a small, slightly raised concrete "stage" that makes up a minuscule portion of the College campus, as described in Paragraph 38 of this Complaint.

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27. Defendant Serrano told Mr. Van Tuinen to fill out an application, which she indicated would require providing, among other things, a photocopy of his student identification card. Defendant Serrano informed Mr. Van Tuinen that she had "two people on campus right now, so you'd have to wait until either the 20th, 27th, or you can go into October." Mr. Van Tuinen reiterated his desire to pass out copies of the Constitution that day – on Constitution Day. Defendant Serrano denied his request, stating "you really don't need to keep going on."

28. Defendant Serrano then telephoned an unnamed person and informed that individual that Mr. Van Tuinen "just wants to question the authority of why can't he hand out constitutional-type papers." Thereafter, Defendant Serrano told Mr. Van Tuinen that he would have to make an appointment with College Vice President of Student Services Brenda Thames so that she could further explain to him "what the time, place, and manner is."

29. On information and belief, when Doe Defendant 1 approached Mr. Van Tuinen outside the student center, when he spoke with him within the student center, and when he directed Mr. Van Tuinen to the Student Development office, Doe Defendant 1 knew, or should have known, that Mr. Van Tuinen would be instructed that he must restrict his distribution of literature to the "free speech area," subject to the application and other limits that doing so entails.

30. Doe Defendant 1 and Defendant Serrano censored Mr. Van Tuinen's lawful and constitutionally protected expression.

31. The actions by Doe Defendant 1 and Defendant Serrano have caused Mr. Van Tuinen to refrain from expressing his beliefs or distributing literature while on campus for fear of being punished under College or District policies.

32. Doe Defendant 1 and Defendant Serrano knew or should have known that preventing Mr. Van Tuinen from speaking and distributing literature in public areas of the College campus violates his clearly established constitutional rights.

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B. The District's and College's Policies

33. The Yosemite Community College District includes two two-year colleges (Columbia College and Modesto Junior College). In the 2011-2012 academic year, 16,209 Full Time students were enrolled. The District had a 2011-2012 budget of $114.4 million.

34. The District promulgates Policies and Administrative Procedures pursuant to Cal. Educ. Code §§ 66300 and 70902.

35. District Policy 3900 (formerly policy 5550) titled "Time, Place & Manner," provides that "[t]he Colleges of the District are non-public forums, except for those areas designated as 'free speech areas', which are limited public forums." (*See* Exhibit A.) District Policy 3900 also establishes that "The Chancellor shall enact such administrative procedures as are necessary to reasonably regulate the time, place and manner of the exercise of free expression in the limited public forums." Policy 3900 further states: "The administrative procedures promulgated by the Chancellor shall not prohibit the right of students to exercise free expression, including but not limited to the use of bulletin boards designated for such use, the distribution of printed materials or petitions in those parts of the College designated as 'free speech areas', and the wearing of buttons, badges, or other insignia."

36. Pursuant to District Policy 3900, the College adopted and published "Guidelines and Procedure for Requesting College Facilities for Free Speech" (the "College Guidelines"). (*See* Exhibit B.) The College Guidelines state that District Policy 3900 was promulgated "in furtherance of and consistent with California Education Code § 76120," and it "provides that Colleges of the District are non-public forums, except for those areas on each campus designated as 'free speech areas,' which are deemed limited public forums."

37. California Education Code § 76120, however, does not declare that campuses are non-public forums, and states that "[s]uch rules and regulations shall

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not prohibit the right of students to exercise free expression," including "the distribution of printed materials or petitions."

38. Nevertheless, the College Guidelines confine all approved campus expression to two small areas of the campus. The College Guidelines state that pursuant to District Policy 3900, the College has identified "appropriate locations on campus to be used as limited public forum use as prescribed by [District] Board Policy." According to the College Guidelines, "Limited public forums on Modesto Junior College's campus" include, at the College's East Campus, "the stage area northeast of the Quad," and "Free Speech boards … located in front of the Student Center." The East Campus Map shows this area of the Quad. It is indicated by the green shaded area. (*See* Exhibit C, East Campus Map, modified with color and explanation, and related photograph.) At its longest and widest points, Plaintiff estimates that the free speech area on the East Campus is approximately 28 feet long, and 22 feet across, though it is irregularly shaped with several angles and small outcroppings, but in any event comprises approximately 600 square feet. The College Guidelines further provide a "[l]imited public forum" at the College's West Campus, a space "designated in the Quad area in between Yosemite and Sierra Halls," and "Free Speech boards … located inside Mary Stuart Rogers Student Learning Center."

39. The College's East and West Campuses have many suitable open areas and sidewalks beyond the free speech areas where student expressive activity, including distribution of literature, will not interfere with or disturb access to College buildings or sidewalks, impede vehicular or pedestrian traffic, or in any way substantially disrupt the operations of campus or the College's educational functions.

40. The College Guidelines state that the College "reserves the right to assign applicants to use limited public forum locations based upon College

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operations," without describing any criteria the College applies to assigning free speech applicants to a specific location.

41. The College Guidelines further require that students request permission to distribute printed materials on campus. According to the College Guidelines:

> To use the free speech areas, student groups or individuals must submit a completed "Limited Public Forum Request Form" to the Office of Student Development and Campus Life for approval ***not less than five (5) working days*** prior to the proposed date of use. * * * Student requests submitted less than five (5) working days before the proposed date of use ("last minute requests") will be considered, but must be reviewed by the Student Activities Advisor, and reconciled with the College Facilities Office.

(Emphasis added).

42. In addition, the College Guidelines limit individuals or groups to eight hours of access to the "free speech areas" per semester. "Requests for additional time per semester may be authorized by administration if space and time is available." With just over 17,900 students enrolled, a Fall semester that runs for 16 weeks from August 26 through December 14, 2013, and Guidelines restricting the availability of the "free speech zone" to "normal hours of operation," which generously construed might encompass 8 a.m. to 6 p.m. Mondays through Fridays, students are even more limited in their ability to exercise their rights to free speech. Indeed, if each student sought to exercise his or her right to free expression on the East Campus, they would be able to do so for a mere 2.57 minutes *per semester*.

43. The College's "Limited Public Forum Request Form," affirms that the College requires "5 Working Days … For Processing." (*See* Exhibit D.) Students must indicate on the form whether they plan to use the East Campus or West Campus free speech area, and the hours of use, submit a form of identification, and affirm that "the guidelines for use of the free speech areas will be followed."

44. The College Guidelines do not provide standards to guide the discretion of the public officials of the College tasked with reviewing requests to

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use "free speech areas" or to evaluate requests for additional time, thus empowering such public officials to administer the policy arbitrarily or on the basis of impermissible factors.

45. Because the policy functions as a licensing scheme with which students must comply before engaging in the exercise of their free speech rights, the policy constitutes a prior restraint on speech, resulting in censorship.

46. Students are subject to disciplinary action for violating District and College rules and regulations. The College Guidelines state that "[r]efusal to cooperate with the … guidelines will subject the user to possible punitive action, including, but not limited to, termination of the program in process; denial of further use of Free Speech Areas; Discipline; Probation; Suspension; Expulsion and/or Removal from campus."

47. District Policy 3900 and the College Guidelines have a chilling effect on Mr. Van Tuinen's rights, and those of all students of the District and the College, to engage freely and openly in expressive activities, including distributing literature.

48. Mr. Van Tuinen wishes to engage in expressive activities, including distributing literature, on the College's campus without the need to obtain advance approval from College officials, but he has not done so since being censored by Doe Defendant 1 and Defendant Serrano on September 17, 2013, for fear of disciplinary action.

49. All of the acts of Defendants, their officers, agents, employees, and servants were executed, and are continuing to be executed, by the Defendants under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of California.

50. Because the policies and actions of Defendants prevent Mr. Van Tuinen from exercising his constitutional rights to free expression at the College, he is suffering irreparable injury.

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51. Defendants' policies and actions create a hostile atmosphere for free expression on campus, chilling the speech of other College students who are not before the Court.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

As-Applied Violation of Plaintiff's Right to Free Speech Under the First and Fourteenth Amendments (42 U.S.C. § 1983)

52. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

53. The First and Fourteenth Amendments extend to campuses of state colleges and universities. *Healy v. James*, 408 U.S. at 180.

54. The College bears the burden of justifying regulation of expressive activity in the public areas of the campus.

55. By stopping Plaintiff's lawful activities distributing copies of the U.S. Constitution on the Modesto Junior College campus without prior approval and outside the "free speech zone," Defendants have explicitly and implicitly chilled Plaintiff's free expression, and have deprived Plaintiff of his clearly established rights to freedom of speech and expression secured by the First and Fourteenth Amendments to the Constitution of the United States.

56. Doe Defendant 1 and Defendant Serrano violated a clearly established constitutional right of which all reasonable college administrators and staff should have known, rendering them liable to Mr. Van Tuinen under 42 U.S.C. § 1983.

57. The denial of constitutional rights is irreparable injury *per se*, and Mr. Van Tuinen is entitled to declaratory and injunctive relief. As a consequence of being denied his First Amendment right to distribute copies of the U.S. Constitution on Constitution Day, Plaintiff experienced significant emotional pain and anguish.

58. Plaintiff is entitled to a declaration that Defendants violated his First Amendment rights. Additionally, Plaintiff is entitled to damages in an amount to be

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determined by the evidence and this Court, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

SECOND CAUSE OF ACTION

As-Applied Violation of the Right to Liberty of Speech Under the California State Constitution

59. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

60. Plaintiff's peaceful speech activities are protected under article 1, section 2 of the California Constitution.

61. By stopping Plaintiff's lawful activities distributing copies of the U.S. Constitution on the College campus without prior approval and outside the "free speech zone," Defendants, acting under color of state law and according to policy and practice, have explicitly and implicitly chilled Plaintiff's free expression, and deprived Plaintiff of his clearly established rights to freedom of speech protected under article 1, section 2 of the California Constitution.

62. Because of Defendants' policies and actions, Plaintiff has suffered, and continues to suffer, irreparable injury that cannot be fully compensated by an award of money damages.

63. Plaintiff is entitled to a declaration that Defendants violated his Liberty of Speech rights under the California Constitution. Additionally, Plaintiff is entitled to damages in an amount to be determined by the evidence and this Court, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

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THIRD CAUSE OF ACTION

Facial Challenge to Violation of Right to Free Speech Under the First and Fourteenth Amendments (42 U.S.C. § 1983) – Prior Restraint

64. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

65. Students have a First Amendment right to engage in expressive activities and to distribute written materials in the public areas of a state college without obtaining advance permission from government officials. *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981); *Papish v. Board of Curators of Univ. of Mo.*, 410 U.S. 667 (1973); *Jews for Jesus, Inc. v. City Coll. of San Francisco*, 2009 WL 86703, at *3 (N.D. Cal. Jan. 12, 2009).

66. A permitting requirement is a prior restraint on speech and therefore bears a heavy presumption against its constitutionality. *Berger v. City of Seattle*, 569 F.3d 1029, 1037 (9th Cir. 2009). The presumptive invalidity and offensiveness of advance notice and permitting requirements stem from the significant burden they place on free speech.

67. The policies and conduct of Defendants restricting all First Amendment protected speech by requiring an advance application to engage in such activity before allowing expressive activities on the College campus grounds is an unconstitutional prior restraint on First Amendment rights.

68. Laws that subject the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, are unconstitutional. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). Defendants' policies vest unfettered discretion in College security and administrative personnel to restrict constitutionally protected expression.

69. As a direct result of the Defendants' continued maintenance of District Policy 3900 and the College Guidelines, Plaintiff and other similarly situated

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students have been, and will continue to be, irreparably injured in that they have been, and will be, deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

70. As a legal consequence of the Defendants' violation of Plaintiff's and other similarly situated students' First and Fourteenth Amendment rights, Plaintiff is entitled to injunctive relief, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

Facial Challenge to Violation of Right to Free Speech Under the Plaintiff's First and Fourteenth Amendment Rights (42 U.S.C. § 1983) – Overbreadth

71. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

72. The College bears the burden of justifying any regulation of expressive activity in the public areas of the campus. Any restrictions on speech in public areas must serve a substantial public interest and must be narrowly tailored and applied so as not to burden more speech than is essential.

73. Even purportedly neutral regulations, such as time, place, or manner restrictions, must be narrowly tailored and must not burden more speech than necessary to achieve a substantial governmental interest.

74. The College cannot legitimately declare the vast majority of public areas on campus to be "non-public forums." *McGlone v. Bell*, 681 F.3d 718 (6th Cir. 2012). Nor can the College identify a substantial governmental interest to be served by preventing individuals from speaking through the distribution of literature in the public areas of campus.

75. The policy restricting all First Amendment protected speech to designated "free speech zones" at the College is unconstitutionally overbroad

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because it does not serve a significant governmental interest, is not narrowly drawn, and impermissibly restricts student expression.

76. The policies restricting speech on campus burden far more speech than is necessary to serve the asserted interest. Rather than being narrowly tailored to protect speech as the Constitution requires, the College policies are tailored to preclude speech. Among other, less speech-restrictive alternatives, the College could enforce rules against those who actually disrupt traffic and/or educational activities or who engage in disorderly conduct.

77. As a direct result of the Defendants' continued maintenance of District Policy 3900 and the College Guidelines, students at the College are deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

78. As a legal consequence of the Defendants' violation of Plaintiff's and other similarly situated students' First and Fourteenth Amendment rights, as alleged above, Plaintiff is entitled to injunctive relief, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

Facial Challenge to Violation of Right to Free Speech Under the Plaintiff's First and Fourteenth Amendments Rights (42 U.S.C. § 1983) – Vagueness

79. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

80. A state enactment is void for vagueness if the prohibitive terms are not clearly defined such that a person or ordinary intelligence can readily identify the applicable standard for inclusion and exclusion. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

81. Defendants' policies restricting speech fail to adequately advise the students subject to discipline under them of the obligations the policies create, and

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are unconstitutionally vague on their face in violation of the First Amendment and of the due process guarantee of the Fourteenth Amendment to the U.S. Constitution.

82. Defendants' policies do not provide standards to guide the discretion of public officials at the College as to whether the College Guidelines apply to particular acts of free expression in the first instance, or for reviewing requests to use "free speech areas," or for evaluating requests for additional time beyond the eight hours of free expression allotted to each student per semester. This empowers such public officials to administer the policy on the basis of impermissible factors or through arbitrary application.

83. Because of Defendants' policies and actions, Plaintiff has suffered, and continues to suffer, economic injury and irreparable harm. Plaintiff is therefore entitled to injunctive relief, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

Facial Challenge to Violation of the Right to Liberty of Speech Under the California Constitution

84. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

85. Under California law applicable to restrictions implicating the Liberty of Speech Clause in the State constitution, for a restriction governing speech in a public forum to survive, the communicative activity must be basically incompatible with the normal activity of that particular place at a particular time. *Kuba v. 1-A Agric. Ass'n*, 387 F.3d 850, 857 (9th Cir. 2004).

86. The policies and conduct of Defendants restricting all First Amendment protected speech by requiring an advance application to engage in such activity before allowing expressive activities on the College campus grounds is an unconstitutional prior restraint on the Liberty of Speech. This is so because no compelling governmental interest is advanced by the policy, the policy is over-

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broad, and there are no guidelines for application of the policy by administrators. The policy vests unfettered discretion in Defendants to restrict constitutionally protected expression.

87. The Defendants' purported "time, place and manner" restrictions are unreasonable in light of the purpose of the forum, are overly broad, and are not narrowly tailored to serve significant government interests nor leave open ample alternative channels of communication.

88. As a proximate result of Defendants' actions, Plaintiff and other similarly situated students have been and will continue to be irreparably injured in that they have been and will be deprived of their rights under the Liberty of Speech Clause in the California Constitution.

89. As a direct result of the Defendants' violation of the Plaintiff's and other similarly situated students' constitutional rights, and of the continued maintenance of District Policy 3900 and the College Guidelines, students at the College continue to be prohibited from engaging in constitutional speech activities.

90. As a legal consequence of the Defendants' violation of Plaintiff's and other similarly situated students' Liberty of Speech rights, as alleged above, Plaintiff is entitled to injunctive relief, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION

Section 1983 *Monell* Claim (Defendant Yosemite Community College District)

91. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

92. A government body such as the District here may be held liable under 42 U.S.C. § 1983, when the execution of government policy or custom, that may be fairly said to represent its official policy, inflicts injury on a plaintiff. Section 1983 also allows liability for constitutional violations committed by government

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employees if the government body itself is responsible for causing constitutional deprivations. *Monell* liability can further rest on ratification by a final policymaker, or for damages caused by a failure to train employees that leads to the deprivation of constitutional rights.

93. In prohibiting Mr. Van Tuinen from distributing copies of the Constitution on the Modesto Junior College campus without obtaining prior approval and limiting his activities to the "free speech areas," Defendants violated Mr. Van Tuinen's clearly established rights under the First and Fourteenth Amendments to the United States Constitution.

94. At all times relevant to this Complaint, Defendants were acting under color of the laws of the State of California and of Stanislaus, Tuolumne, Calaveras, Merced, San Joaquin, and Santa Clara Counties.

95. At the time of Mr. Van Tuinen's unlawful prohibition from distributing written materials, California Education Code § 76120 provided that state colleges may not promulgate rules and regulations that "prohibit the right of students to exercise free expression," including "the distribution of printed materials or petitions."

96. Nonetheless, Doe Defendant 1 and Defendant Serrano interfered with and prevented Mr. Van Tuinen from distributing written materials on the Modesto Junior College campus. And further, the District and College promulgated policies limiting student speech activities to designated "free speech areas," and required prior approval to use such facilities.

97. The District fails to train its administrators and employees adequately with respect to the First Amendment rights of college students, displaying deliberate indifference to the student body's constitutional rights.

98. On information and belief, the District failed to supervise and discipline its administrators and employees for unlawfully interfering with the First Amendment right of students to engage in expressive activities and distribute

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written materials in the public areas of a state college without obtaining advance permission from government officials, displaying deliberate indifference to its citizens' constitutional rights.

99. These unconstitutional policies, customs, and practices of the District were the moving force behind the violation of Mr. Van Tuinen's constitutional rights by Doe Defendant 1 and Defendant Serrano.

100. As a direct and proximate result of the District's unconstitutional policies, customs and practices, Mr. Van Tuinen suffered lost opportunities to speak and significant emotional pain and anguish. Plaintiff is thus entitled to a declaration that Defendants violated his First Amendment rights. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

Declaratory Judgment and Injunction (28 U.S.C. § 2201, et seq.)

101. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

102. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning Plaintiff's rights under the United States Constitution and under California's Constitution. A judicial declaration is necessary and appropriate at this time as to Counts I through VII above.

103. Plaintiff desires a judicial determination of his rights against Defendants as they pertain to Plaintiff's right to speak, assemble, and distribute literature on the outdoor campus areas of Modesto Junior College without being subjected to a prior restraint or "time, place, and manner" regulations that are unreasonable, that are not narrowly tailored to serve a substantial governmental interest, and that do not leave open ample alternative channels of communication.

104. To prevent further violation of Plaintiff's constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant

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to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring the District's and the College's policies unconstitutional.

105. Furthermore, pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, it is appropriate and hereby requested that this Court issue a permanent injunction prohibiting the Defendants from enforcing their restrictions on Plaintiff's expressive activities to the extent they are unconstitutional, to prevent the ongoing violation of Plaintiff's constitutional rights. Plaintiff and his fellow students are suffering irreparable harm from continued enforcement of the District's and College's unconstitutional policies, monetary damages are inadequate to remedy their harm, and the balance of equities and public interest both favor a grant of injunctive relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Robert Van Tuinen respectfully requests that the Court enter judgment against Defendants and provide Plaintiff the following relief:

A. A declaratory judgment stating that Defendants' speech codes are unconstitutional facially and as-applied and that they violate the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution and by the Liberty of Speech Clause of California's Constitution;

B. A permanent injunction restraining enforcement of Defendants' unconstitutional speech codes and enforcement practices;

C. A declaratory judgment that Defendants' censorship of Plaintiff's expressive activity of distributing copies of the U.S. Constitution without prior approval and outside the "free speech zone" violated his First and Fourteenth Amendment rights and the California Constitution's Liberty of Speech Clause;

D. Monetary damages in an amount to be determined by the Court to compensate for the Defendants' application of the illegal speech codes to interfere with Plaintiff's expressive activity of distributing copies of the U.S. Constitution without prior approval and outside the "free speech zone;"

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E. Plaintiff's reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988, Cal. Code Civ. Proc. § 1021.5, and other applicable law; and

F. All other further relief to which Plaintiff may be entitled.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues properly triable by jury in this action.

DATED: October 10, 2013

DAVIS WRIGHT TREMAINE LLP
ROBERT CORN-REVERE (*pro hac vice to be filed*)
RONALD G. LONDON (*pro hac vice to be filed*)
LISA B. ZYCHERMAN (*pro hac vice to be filed*)
ROCHELLE L. WILCOX

By: /s/ Rochelle L. Wilcox
Rochelle L. Wilcox

Attorneys for Plaintiff
Robert Van Tuinen

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

ROBERT VAN TUINEN

(b) County of Residence of First Listed Plaintiff Stanislaus
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Rochelle L. Wilcox
Davis Wright Tremaine LLP
865 South Figueroa Street, Suite 2400
Los Angeles, California 90017
Telephone: (213) 633-6800

DEFENDANTS

YOSEMITE COMMUNITY COLLEGE DISTRICT, DR. JOAN SMITH, JILL STEARNS, MICHAEL GUERRA, BRENDA THAMES, BECKY CROW, CHRISTINE SERRANO, DOE DEFENDANT 1

County of Residence of First Listed Defendant N/A
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Unknown

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities Employment
- ☐ 446 Amer. w/Disabilities Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. § 1983

Brief description of cause:
Civil rights action to vindicate constitutional free speech rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ Amount to be determined by Court

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: 10/10/2013

SIGNATURE OF ATTORNEY OF RECORD: /s/ Rochelle L. Wilcox

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

Yosemite Community College District Policies and Administrative Procedures **No. 3900**

Policy

3900 Time, Place & Manner

The Colleges of the District are non-public forums, except for those areas designated as "free speech areas", which are limited public forums. The Chancellor shall enact such administrative procedures as are necessary to reasonably regulate the time, place and manner of the exercise of free expression in the limited public forums.

The administrative procedures promulgated by the Chancellor shall not prohibit the right of students to exercise free expression, including but not limited to the use of bulletin boards designated for such use, the distribution of printed materials or petitions in those parts of the College designated as "free speech areas", and the wearing of buttons, badges, or other insignia. Nothing in this policy shall prohibit the regulation of hate violence, so long as the regulation conforms to the requirements of the First Amendment to the United States Constitution, and of Section 2 of Article 1 of the California Constitution.

References:
Education Code Section 76067, 76120, 66301

Adopted: June 28, 2004
Revision Adopted: May 13, 2009

Administrative Procedure

3900 Time, Place & Manner

I. The students of the District shall be permitted to exercise their rights of free expression subject to the time, place, and manner policies and procedures contained in Board Policy 3900 and these procedures.

II. The Colleges of the District are non-public forums, except for designated areas generally available to students and the community, as follows:

A. Modesto Junior College (East Campus) the area(s) generally available to students and the community is designated as the stage area Northeast section of the Quad. The Free Speech boards are located in front of the Student Center.

B. At Modesto Junior College (West Campus) generally available to students and the community is designated in the Quad area in between Yosemite and Sierra Halls. The Free Speech boards are located outside the Mary Stuart Rogers Student Learning Center.

C. At Columbia College, the area(s) generally available to students and the community are designated in *Columbia College Guidelines and Procedures for Requesting College Facilities for Free Speech* which can be obtained at the Office of Vice President for Student Learning.

III. The areas generally available to students and the community are limited public forums. The District reserves the right to revoke that designation and apply a non-public forum designation at its discretion.

A. The District reserves the right to designate areas as non-public forums as necessary to prevent the substantial disruption of the orderly operation of the Colleges. Areas of the Colleges that are non-public forums specifically include campus offices, classrooms, warehouses, maintenance yards, and locker rooms.

IV. The use of area(s) generally available to students and the community is subject to the following:

A. Persons using the area(s) generally available to students and the community and/or distributing material in the areas generally available to students and the community shall not impede the progress of passersby, nor shall they force passersby to take material.

B. No person using the area(s) generally available to students and the community shall touch, strike or impede the progress of passersby, except for incidental or accidental contact, or contact initiated by a passerby.

C. Persons using an area(s) generally available to students and the community shall not use any means of amplification that creates a noise or diversion that disturbs or tends to disturb the orderly conduct of the campus or classes taking place at that time.

D. No persons using the area(s) generally available to students and the community shall solicit donations of money, through direct requests for funds, sales of tickets or otherwise, except where he or she is using the area(s) generally available to students and the community on behalf of and collecting funds for an organization that is registered with the Secretary of State as a nonprofit corporation or is an approved Associated Students Organization or club.

E. Persons using the area(s) generally available to students and the community shall not disrupt the orderly operation of the college.

F. Unauthorized camping is prohibited.

V. All persons using the area(s) generally available to students and the community of the colleges shall be allowed to distribute petitions, circulars, leaflets, newspapers, and other printed matter. Such distribution shall take place only within the area(s) generally available to students and the community. Material distributed in the area(s) generally available to students and the community that is discarded or dropped in or around the area(s) generally available to students and the community other than in an appropriate receptacle must be retrieved and removed or properly discarded by those persons distributing the material prior to their departure from the area(s) generally available to students and the community that day.

VI. Posting: Students shall be provided with bulletin boards for use in posting student materials at campus locations convenient for student use. All materials displayed on a bulletin board shall clearly indicate the author or agency responsible for its production, the name of the person requesting the posting, and shall be dated and approved by the Student Development and Campus Life Office on the East and West Campus for Modesto Junior College, and the designee of the Learning Support Services office at Columbia College.

References:
Education Code Section 76120

Procedure Last Revised: ~~April 11, 2007,~~ May 9, 2012

EXHIBIT B

Modesto Junior College
Guidelines and Procedure for Requesting
College Facilities for Free Speech

The Yosemite Community College District ("YCCD") Board policy 5550, in furtherance of and consistent with California Education Code § 76120, provides the Colleges of the District are non-public forums, except for those areas on each campus designated as "free speech areas," which are deemed limited public forums. The Chancellor shall enact such regulations and administrative procedures as are necessary to reasonably regulate the time, place and manner of the exercise of free expression in the limited public forums. These regulations shall be (1) content-neutral; (2) narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels of communication.

YCCD Board policy 5550 allows Modesto Junior College to establish institutional regulations and procedures, and in accordance with Board policy, Modesto Junior College has established such regulations and procedures to provide students and community members with the opportunity to exercise their right of expression, while fostering an atmosphere and conditions in which Modesto Junior College's educational mission can be carried out without disruption. Modesto Junior College shall identify appropriate locations on campus to be used as limited public forum use as prescribed by YCCD Board Policy.

Limited public forums on Modesto Junior College's campus are identified herein below:

A. Modesto Junior College (East Campus) the area(s) generally available to students and the community is designated as the stage area northeast of the Quad. The Free Speech boards are located in front of the Student Center.
B. Modesto Junior College (West Campus) generally available to students and the community is designated in the Quad area in between Yosemite and Sierra Halls. The Free Speech boards are located inside Mary Stuart Rogers Student Learning Center.

Modesto Junior College reserves the right to assign applicants to use limited public forum locations based upon College operations.

Office of the Student Development and Campus Life
Modesto Junior College
435 College Avenue, Modesto, CA 95350
Phone 209 575-6700 Fax 209 575-6143

GUIDELINES:

1. No event, speech, demonstration, activity or other exercise of "Free Speech" on campus shall interfere with or disrupt the educational process or other scheduled activities of the campus or its facilities.
2. To insure no conflicts with scheduled campus events, all college and non-college groups and individuals are to request advance approval.
3. Modesto Junior College recognizes the right of free expression, but encourages speakers to be respectful of all people. The following examples are considered unprotected speech, and will not be tolerated: threats, incitement of imminent lawless action, racial and sexual harassment, fighting words, obscenity and defamation.
4. Cooperation with Modesto Junior College staff is expected when visiting the campus and/or using campus tables, equipment and facilities.
5. Compliance with pertinent college, city, state and federal regulations.
6. The signature of the requesting/responsible party indicates agreement to work within these guidelines, and if the application is submitted on behalf of a college group, the requesting college representative agrees to attend and supervise the entire event.
7. Use of free speech areas is limited to normal hours of college operation.
8. Refusal to cooperate with the above guidelines will subject the user to possible punitive action, including, but not limited to, termination of the program in process; denial of further use of Free Speech Areas; Discipline; Probation; Suspension; Expulsion and/or Removal from campus. Modesto Junior College students have the right to appeal the decision of the designated college official.

PROCEDURES:

Students and Student Groups: To use the free speech areas, student groups or individuals must submit a completed "Limited Public Forum Request Form" to the Office of Student Development and Campus Life for approval not less than five (5) working days prior to the proposed date of use. In order to provide the most access to the most people, no individual or group may reserve free speech areas more than eight (8) hours per semester. Requests for additional time per semester may be authorized by administration if space and time is available. Student requests submitted less than five (5) working days before the proposed date of use ("last minute requests") will be considered, but must be reviewed by the Student Activities Advisor, and reconciled with the College Facilities Office.

Non-Students and Off-campus groups: To use the free speech areas, non-students and groups from off-campus must submit a completed "Limited Public Forum Request Form" to the Office of Student Development and Campus Life for approval not less than five (5) working days prior to the proposed date of use. In order to provide the most access to the most people, no individual or group may reserve free speech areas more than eight (8) hours per semester. Requests for additional time per semester may be authorized by administration if space and time is available. No last minute requests are permitted.

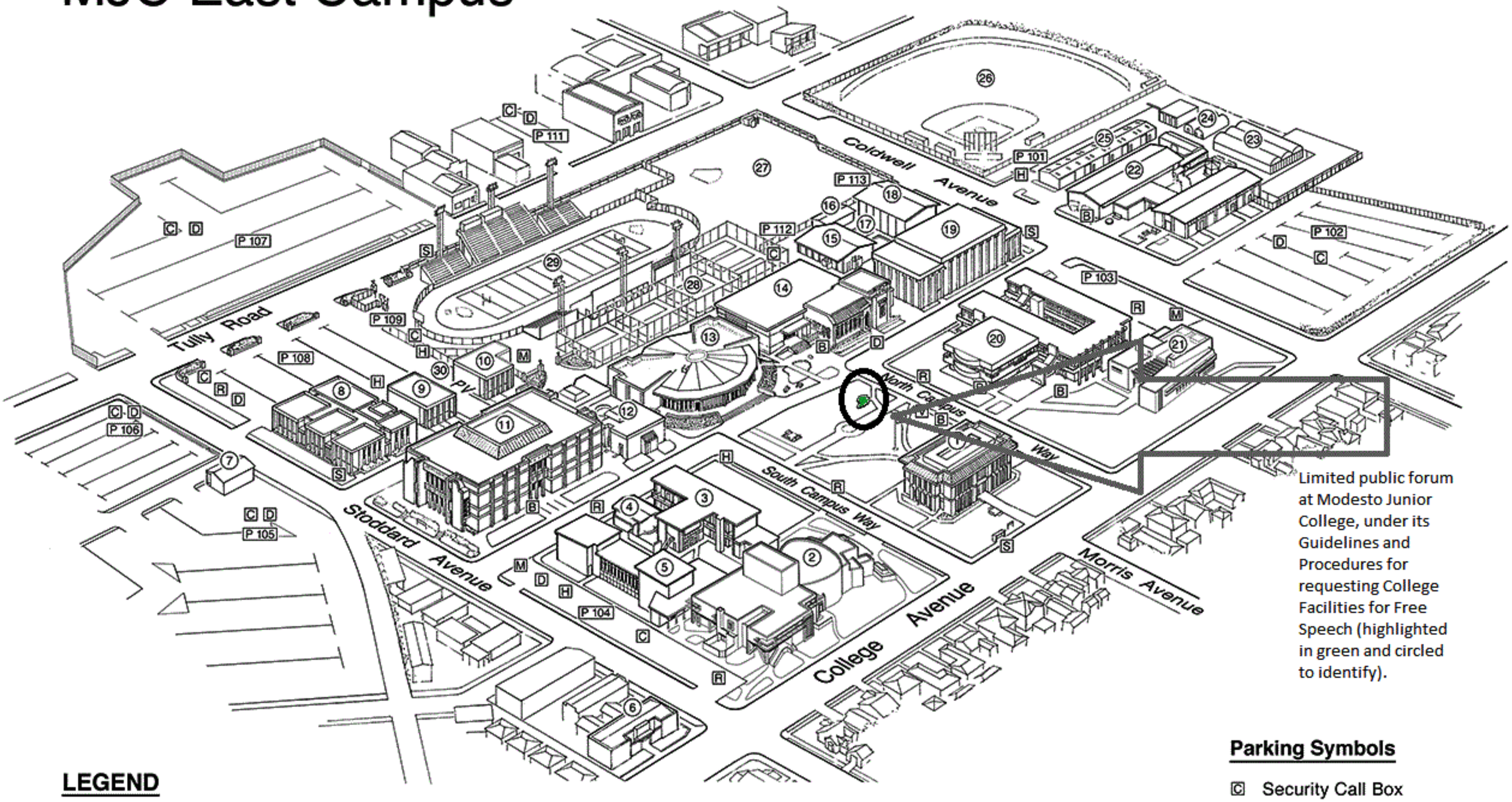
CANCELLATION NOTIFICATION:

If cancellation is necessary, immediate notice shall be given to the Office of Student Development and Campus Life.

Office of the Student Development and Campus Life
Modesto Junior College
435 College Avenue, Modesto, CA 95350
Phone 209 575-6700 Fax 209 575-6143

EXHIBIT C

MJC East Campus



Limited public forum at Modesto Junior College, under its Guidelines and Procedures for requesting College Facilities for Free Speech (highlighted in green and circled to identify).

LEGEND

1 Administration (Morris Memorial)
2 Performing and Media Arts Center
3 Art
4 Art Gallery
5 Music
6 Great Valley Museum
7 Facilities Operations
8 Electronics/ Computer Science
9 Journalism
10 Classroom Annex
11 Founders' Hall
12 Forum
13 Student Center
14 Learning Resource Center/ Library
15 Physical Education- Men
16 Physical Education Offices
17 Swimming Pool
18 Physical Education- Women
19 Gymnasium
20 Science
21 Student Services
22 Agriculture
23 Greenhouse
24 Propagation House
25 Ag Storage
26 Athletic Field #2
27 Athletic Field #1
28 Tennis Courts
29 Stadium
30 Pirates' Village

Parking Symbols

C Security Call Box
P Parking 101-113
D Parking Dispenser
H Disabled Parking
M Motorcycle Parking
R Reserved Parking
V Visitor Parking
B Bicycle Parking
S Prime Shine - Pirate Express Shuttle



EXHIBIT D

Limited Public Forum Request Form
5 Working Days Required for Processing

Applicant/Organization:

Are you and/or the Group: a Student or Non-Student ? (mark one)

Date Requested:

Hours of Use: East Campus____ West Campus____

Intended Use:

Number of Participants: _____ Will there be amplified sound? Yes _____ No _____ (mark one)

If yes, please describe: _____

Please describe any additional set up requirements you may require (i.e., tables, chairs, etc.) and/or any materials you will bring on to the campus (petitions, displays, printed materials, promotional items, etc):

Requesting / Responsible Party Contact Information:

Physical Address:

Contact Person: _____ Phone Number:

Email contact: ___ Other Phone:

Form of Identification and ID Number_____ Office Staff ID Verification___
(Initial)

Your signature(s) below affirm the guidelines for use of the free speech areas will be followed.

Date:

Applicant's Authorized Signature

FOR COLLEGE USE ONLY: Date Application Received:

Approved by SD/CL: _____ Date:
Approved by Vice President- Student Services:: _____ Date:
Approved by President: _____ Date:
(President approval required **only** if Applicant is a for-profit organization) 10/17/11

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Modesto Junior College
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